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Central Intelligence Agency

Washington, D.C. 20505

6 September 1984

The Honorable William French Smith
The Attorney General
Washington, D. C. 20530

Dear Bill:

I write you on a matter on which our staffs are working and which is of high importance to our security interests. I bring it to your attention now because time is short and we may need to go over it together.

As you know, we have been trying for the last six years to obtain legislative relief from the unique burdens we face under the Freedom of Information Act (FOIA). We now are on the verge of obtaining this essential relief.

The pending legislation would bring major benefits to our national intelligence effort. It would remove from the search and review provisions of the FOIA large segments of our operational files, thereby allowing the CIA to provide greater assurances of confidentiality to our foreign sources and liaison services and releasing many of our most experienced officials from involvement in FOIA processing. It would also enhance the maintenance of compartmentation of CIA information, which is a principle crucial to the success of sensitive intelligence operations. The Administration, including the Department of Justice, has extensively examined and approved the proposal that CIA seek separate legislation for FOIA relief and the President has personally given his support.

Our legislation was unanimously passed by the Senate late last year. The House Permanent Select Committee on Intelligence amended the bill and unanimously reported it earlier this year. Representative Glenn English, Chairman of the House Government Operations Subcommittee on Government Information, Justice and Agriculture, then made the addition of an amendment to the Privacy Act a prerequisite for Subcommittee action on the legislation. This amendment simply states that the Privacy Act cannot be used as a withholding statute under exemption (b)(3) of the FOIA.

We understand that it is a matter of some concern to the Department of Justice because it would be contrary to the revised policy guidance given by the Department of Justice on the use of the Privacy Act as a (b)(3) exemption and because this very question is awaiting decision by the United States Supreme Court. On the other hand, we have been informed that the Department of Justice will withdraw its objections to Representative English's amendment to our bill if a satisfactory agreement can be reached on a substitute bill for S. 774, the government-wide FOIA relief bill. I understand that negotiations are currently under way to achieve this compromise.

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The Administration may have to evaluate the prospects and the relative value of getting CIA's sensitive operational files exempted against preserving Justice's ability to use the Privacy Act to exempt some files from demands under the Freedom of Information Act. The considerations from the CIA standpoint are:

a. Our operational files will no longer need to be searched.

b. Our foreign sources and liaison services would have greater assurance that we can preserve their confidentiality.

c. Some of our most able and experienced officers could turn from FOIA processing to gathering intelligence. The Agency can use only high caliber personnel to protect sources included in its operational files.

d. While the relief pertains only to the CIA records at this time, it certainly is a blueprint for other agencies in the Intelligence Community to obtain similar relief in the near future.

e. It is extremely important for the Agency and its personnel to continue the momentum on the legislative front which started with the passage of the Classified Information Procedures Act in 1982 by obtaining this legislation as opposed to allowing this hard fought effort to go down the drain without any appreciable results.

Bill, this is a critical issue for this Agency. We urgently need this relief from the FOIA. It would represent an auspicious start in achieving a goal to which this Administration has been committed since its inception. If we do not get enactment of this legislation in this Congress, the chances of its enactment over the next several years are slim. As a result of the successful adoption of Executive Orders 12333 and 12356 and passage of the Intelligence Identities Protection Act of 1982, this Administration has built up a positive regulatory and legislative momentum in the national security arena which would be severely impacted if we failed to obtain enactment of the FOIA legislation in this Congress. I believe with time running out in this session of the Congress it is essential we resolve this quickly.

Sincerely,

William J. Casey
Director of Central Intelligence

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